IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 226 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

HARSHADKUMAR BHAILAL PARIKH

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Appearance:

1. Criminal Appeal No. 226 of 2004

MS NANDINI JOSHI, APP for Petitioner No. 1

..... for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 12/03/2004

ORAL JUDGEMENT

1. Heard ld. APP Ms. Nandini Joshi for the State. Before an application to grant leave to appeal, after removal of office objections, could be placed for

admission hearing, the appellant State Government has decided not to proceed further with the proceedings and, therefore, the appellant State has moved a note that State may be permitted to withdraw present application to grant leave to appeal and thereby appeal preferred against the judgment and order passed by ld. Addl. Sessions Judge recording acquittal of the respondent accused should also be disposed of accordingly.

2. It is true that the respondent accused was convicted by the ld. JMFC for the offences punishable under the provisions of The Prevention of Food Adulteration Act, but by a reasoned order, ld. Addl.Sessions Judge has acquitted the respondent accused. The State of Gujarat as was intending to challenge the acquittal, present application to grant leave to appeal came to be moved. Now, the State Government has decided to accept the judgment and order of acquittal passed by ld. Addl. Sessions Judge. A question needs to be answered is whether it would open for the State, not to press such application preferred by the State for grant of leave to appeal in the matter of public interest and public health ?

3. I have carefully considered the decision taken by the State Government as per the letter bearing No. 5255/2003/ Surendranagar/703 dated 4th March 2004 addressed by Jt.Secretary, Govt. of Gujarat addressed to the Public Prosecutor, High Court of Gujarat as well as subjective satisfaction of the ld. PP as reflected in letter dated 9.3.2004 of ld. Public Prosecutor. Both the documents are produced in the present case. Present request can not be equated with an application under Sec.321 of CrPC as the respondent at the conclusion of appeal proceedings, has been declared acquitted.

4. Hence, request to withdraw the application for leave to appeal is accepted. State Government is permitted to withdraw the application for leave to appeal. Application stands disposed of as withdrawn. Withdrawal of this application, obviously, would also automatically result into withdrawal of the criminal appeal filed by the State Government as the same would not survive and consequently, the impugned judgment and order of acquittal dated 11.9.2003 passed by ld. Addl. Sessions Judge, Dhrangadhra in Cri.Appeal No. 4/2000 shall remain final and confirmed. Order accordingly.

5. Before parting with the order, I am inclined to observe that in view of acquittal recorded by the ld. Addl. Sessions Judge, certain decisions of the Apex

Court as well as of this Court in reference to the application filed by the State under Sec.321 of CrPC, have been considered and they have otherwise no direct relevance.

[ C.K. BUCH, J ]

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